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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 DANIEL L. TRIGGS,

11 Plaintiff,

12 v.

13 CAROLYN W. COLVIN, Acting
14 Commissioner of the Social Security
Administration,

15 Defendant.
16

CASE NO. 14-cv-05664 JRC

ORDER ON PLAINTIFF'S
COMPLAINT

17 This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and
18 Local Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S.
19 Magistrate Judge and Consent Form, Dkt. 5; Consent to Proceed Before a United States
20 Magistrate Judge, Dkt. 6). This matter has been fully briefed (*see* Dkt. 12, 13, 14).

21 After considering and reviewing the record, the Court concludes that the ALJ did
22 not err when he failed to credit fully the opinion of examining doctor, Dr. Harmon. The
23 ALJ properly relied in part on a finding that her opinions were based on plaintiff's
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1 subjective complaints, as well as his findings that Dr. Harmon's opinions are inconsistent
2 with the record as a whole and with plaintiff's activities of daily living.

3 Therefore, this matter is affirmed pursuant to sentence four of 42 U.S.C. § 405(g).

4 BACKGROUND

5 Plaintiff, DANIEL L. TRIGGS, was born in 1962 and was 45 years old on the
6 alleged date of disability onset of September 1, 2007 (*see* AR. 197-200, 201-05). Plaintiff
7 was in special education and completed the 10th grade (AR. 42-43). Plaintiff has work
8 experience as a groundskeeper, construction laborer, janitor and installing underground
9 utilities (AR. 271-82). Plaintiff's last employment was as a groundskeeper watering
10 lawns and he was fired because he did not show up for work (AR. 36).
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12 According to the ALJ, plaintiff has at least the severe impairments of "bilateral
13 knee pain, impingement syndrome, attention deficit hyperactivity disorder (ADHD), and
14 bipolar affective disorder/schizoaffective disorder, and alcohol dependence in remission
15 (20 CFR 404.1520(c) and 416.920(c))" (AR. 11).

16 At the time of the hearing, plaintiff was living at a Christian halfway house (AR.
17 34).

18 PROCEDURAL HISTORY

19 Plaintiff's applications for disability insurance ("DIB") benefits pursuant to 42
20 U.S.C. § 423 (Title II) and Supplemental Security Income ("SSI") benefits pursuant to 42
21 U.S.C. § 1382(a) (Title XVI) of the Social Security Act were denied initially and
22 following reconsideration (*see* AR. 72-78, 79-87, 89-93, 94-100). Plaintiff's requested
23 hearing was held before Administrative Law Judge Robert Kingsley ("the ALJ") on April
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17, 2013 (*see* AR. 30-55). On May 1, 2013, the ALJ issued a written decision in which the ALJ concluded that plaintiff was not disabled pursuant to the Social Security Act (*see* AR. 6-29).

In plaintiff's Opening Brief, plaintiff raises the following issues: (1) Did the Commissioner err in the evaluation of the opinion evidence; (2) Did the Commissioner err by failing to find that plaintiff met or equaled a listing; and (3) Did the Commissioner err in determining plaintiff's Residual Functional Capacity (*see* Dkt. 12, p. 2).

STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social security benefits if the ALJ's findings are based on legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) (*citing Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

DISCUSSION

(1) Did the Commissioner err in the evaluation of the opinion evidence?

Plaintiff contends that the ALJ erred in evaluating the opinion evidence from examining doctor, Dr. Dana Harmon, Ph. D. (*see* Dkt. 12, pp. 4-7). Defendant argues that "the ALJ carefully weighed 11 medical opinions and provided detailed reasons for the weight he assigned each" (Dkt. 13, p. 5 (*citing* AR. 17-20)). Defendant also argues that the ALJ properly relied on his finding that Dr. Harmon's "opinion that plaintiff had marked and severe mental limitations [is] inconsistent with the record as a whole, including the opinions of other examining psychologists" (*see id.* at p. 7 (*citing* AR. 18-

1 19)). Defendant argues that the ALJ also properly relied on the finding that Dr. Harmon's
2 "opinions were based on plaintiff's subjective complaints about his social functioning
3 and maintaining attendance rather than on her own observations" (*see id. (citing AR.*
4 19)). Finally, defendant argues that the ALJ also properly relied on a finding that "Dr.
5 Harmon's opinions were inconsistent with plaintiff's activities" (*see id. at p. 8 (citing*
6 *AR. 19)*). For the reasons discussed herein, the Court agrees with defendant's arguments.

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8 When an opinion from an examining doctor is contradicted by other medical
9 opinions, the examining doctor's opinion can be rejected "for specific and legitimate
10 reasons that are supported by substantial evidence in the record." *Lester v. Chater*, 81
11 F.3d 821, 830-31 (9th Cir. 1996) (*citing Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir.
12 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ can accomplish
13 this by "setting out a detailed and thorough summary of the facts and conflicting clinical
14 evidence, stating his interpretation thereof, and making findings." *Reddick v. Chater*, 157
15 F.3d 715, 725 (9th Cir. 1998) (*citing Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.
16 1989)). Here, the ALJ complied with this standard.

17 The ALJ's first reason for failing to credit fully the opinions of Dr. Harmon is that
18 she "relied primarily on the claimant's subjective complaints with regards to social
19 functioning and maintaining attendance and not on her own observations" (*see AR. 19*).
20 This finding is supported by substantial evidence in the record as a whole. For example,
21 on July 30, 2008, Dr. Harmon provided numerous opinions regarding limitations in social
22 factors, and described the basis for these ratings with a quote from plaintiff: "He said that
23 his normal mood is: "depressed . . . sometimes I get anxiety and racing thoughts . . . I
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1 can't concentrate"" (*see* AR. 454). Dr. Harmon also indicated that she relied on the Beck
2 Depression Inventory and the Beck Anxiety Inventory, both of which rely on plaintiff's
3 subjective answers to a variety of questions (*see* AR. 451, 457-58).

4 Similarly, on June 24, 2009, Dr. Harmon again indicated the basis for her opinion
5 regarding plaintiff's limitations in social factors with a quote from plaintiff: "He said that
6 his normal mood is: "worried and anxious . . . some days I don't care about anything . . .
7 I'm really up-and-down . . . The medications help a little, but I don't know, maybe I
8 should try a higher dose"" (*see* AR. 444). Dr. Harmon again indicated reliance on the
9 Beck Depression Inventory (*see id.*). For her 2012 opinion, Dr. Harmon does not indicate
10 the basis for her opined limitations (*see* AR. 524).
11

12 When failing to credit fully the opinions of Dr. Harmon, the ALJ also found that
13 with "respect to the cognitive factors, Dr. Harmon's opinion is inconsistent with the
14 opinion of Dr. Seymanski" (*see* AR. 19). As noted by the ALJ, Dr. Seymanski "found
15 that the claimant had no limitation in understanding, remembering, and following simple
16 instructions;" and she noted that plaintiff "was able to perform simple tasks on the mental
17 status exam, but he had more difficulty with complex tasks" (*see id.*). The Court notes
18 that for the residual functional capacity, the ALJ found that plaintiff could perform
19 simple, routine tasks (*see* AR. 13). The ALJ's characterization of the opinion of Dr.
20 Seymanski is supported by substantial evidence in the record as a whole (*see* AR. 434).
21 Based on the record, the Court concludes that the ALJ's finding that Dr. Harmon's
22 opinion is inconsistent with the opinion of Dr. Seymanski is based on substantial
23 evidence in the record as a whole. The Court also concludes that the ALJ reasonably
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1 relied on this finding when failing to credit fully the opinion of Dr. Harmon regarding
2 plaintiff's limitation with respect to cognitive factors. The ALJ is responsible for
3 resolving ambiguities and conflicts in the medical evidence. *See Reddick v. Chater*, 157
4 F.3d 715, 722 (9th Cir. 1998) (*citing Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.
5 1995)).

6 Finally, the ALJ also relied on a finding that "the degree of limitations found by
7 Dr. Harmon are inconsistent with the claimant's activities discussed above, such as
8 mowing the lawn, cleaning his household, regularly attending church, and navigating
9 places while riding his bike, which suggests a greater level of functioning than Dr.
10 Harmon found" (*see* AR. 19). As noted by defendant, the ALJ "reasonably found that
11 these activities conflicted with Dr. Harmon's opinion, for example, that plaintiff had a
12 marked limitations in the ability to interact appropriately in public contacts and a
13 moderate limitation in the ability to perform routine tasks" (*see* Dkt. 13, p. 8 (*citing* AR.
14 444)). The Court concludes that the ALJ's finding of an inconsistency here is supported
15 by substantial evidence in the record as a whole and provides some support for the ALJ's
16 failure to credit fully the opinions of Dr. Harmon.
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18 For the reasons stated and based on the record as a whole, the Court concludes that
19 the ALJ did not err in failing to credit fully the opinions of Dr. Harmon.

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(2) **Did the Commissioner err by failing to find that plaintiff met or equaled a listing and did the Commissioner err in determining plaintiff's Residual Functional Capacity ("RFC")?**

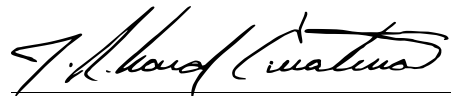
Plaintiff's argument with respect to the step three determination that plaintiff did not meet or equal a listing depends on plaintiff's argument that the ALJ "erred in the weight that was given to the opinion of Dr. Harmon" (*see* Dkt. 12, p. 8). Because the Court already has concluded that the ALJ did not err when evaluating the opinion of Dr. Harmon, this argument by plaintiff fails, *see supra*, section 1. Similarly, plaintiff argues that the RFC "determination is flawed" because the ALJ failed to account for Dr. Harmon's "opinions and the resulting limitations in determining [plaintiff's] residual functional capacity (RFC)" (*see* Dkt. 12, p. 9). Therefore, this argument also fails.

CONCLUSION

Based on the stated reasons and the relevant record, the Court **ORDERS** that this matter be **AFFIRMED** pursuant to sentence four of 42 U.S.C. § 405(g).

JUDGMENT should be for defendant and the case should be closed.

Dated this 12th day of February, 2015.



J. Richard Creatura
United States Magistrate Judge